In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1006

CECIL R. REED, PETITIONER

v.

WALTER J. HICKEL, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

We respectfully invite the Court's attention to the following facts which show that the petition was filed out of time.

On September 17, 1969, the Court of Appeals for the Ninth Circuit affirmed the judgment of the district court in this Federal Homestead Act case, holding that substantial evidence in the administrative record supported the Secretary's determination that petitioner's entry did not meet the cultivation requirements of the Act (Pet. App. A). The 90-day period for filing a petition for a writ of certiorari therefore expired on December 16, 1969. The petition for a writ of certiorari, however, was not filed until De-

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cember 26, 1969; no extension of time for petitioning was obtained.[1]

Section 2102(c) of Title 28 provides that "any writ of certiorari intended to bring any judgment or decree in a civil action * * * before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree." Since this time limitation is jurisdictional, the petition should be denied as untimely.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1970.

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[1] Although the petition itself was submitted to the Clerk on December 15, 1969, the record was not submitted until December 26, 1969, and that was the date on which the petition and record were filed. See Rule 21(1) of the Rules of this Court.

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